HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 143 of 2002 (M/S)

CIVIL SIDE

Dinesh Chand Paliwal …….PETITIONER

versus

Swami Sukhdevanand Trust & another ……RESPONDENTS

Hon'ble Rajesh Tandon J.

The present writ petition has been filed by the defendant petitioner against the order passed by the District Judge, Pauri Garhwal dated 19.3.2002 by which the revision has been rejected at the admission state.

The brief facts of the case are that a suit was filed by the plaintiff society duly registered under the Society Registration Act, praying for the following relieves:

(a) That through the decree of the court the plaintiffs be put in actual and physical possession of the accommodation in the suit, detailed at the end of the plaint, after ejecting the defendant through the agency of the court, valued at Rs.6000/-, c.f. paid rs. 757.50 p.

(b) That the decree of Rs. 14500/- with pendente lite and future interest @ 18% per annum be passed in favour of the plaintiffs as against the defendant, valued at Rs.14500/- ***C.F. paid Rs. 1495/-.***

(c) That a decree of Rs.2100/- with pendente lite and future interest @ 18% P.A. in respect of the damages for use and

occupation up to the date of the suit be passed in favour of the plaintiff as against the defendant, valued at Rs.2100/- C.F. paid Rs.309.50p.

(d) That a decree of Rs.2000/- P.M. with pendente lite and future interest @ 18% P.A. for use and occupation after the date of the suit till the date of actual delivery of possession to the plaintiff of the accommodation in suit be passed in favour of the plaintiff as against the defendant, tentatively valued at Rs.2000/-one month's dues and a C.F. of Rs.297.50 p. is being paid. Rest of the Court fees shall be paid at the time of execution."

The plaint averments are that the plaintiff is a Society and U.P. Act No.13 of 1972 is not applicable to the building in dispute. The premises are meant for pilgrims and general public. There is also a Gaushala situated in Permarth Niketan. It was stated that the defendant is a tenant of the accommodation and is a defaulter.

The suit was contested by the petitioner alleging therein that the suit is not maintainable as the provisions of U.P. Act No. 13 of 1972 is application. During the proceedings of the case an application was filed for examining the signatures on the document paper no. 163 Ga. On 21st February 2002 the said application was rejected. The defendant has preferred a revision, which was summarily rejected.

I have heard Sri J.P. Joshi for the petitioner and Sri Ramji Srivastava on behalf of respondent. Parties have already exchanged their pleadings. Both the parties agreed that since the proceedings in S.C.C. Case No.3 of 1997 are pending, therefore, the writ petition may be decided at the admission stage.

In my opinion the revisional court should have given the reasons as it was a revision under section 25 of the Provisional Small Cause Court Act. Once the document has been denied by the

petitioner and the prayer was for being examined by the handwriting expert there was no reason to reject the revision without assigning any reasons.

Reasons are necessary while deciding a revision in order to show the application of mind by the Presiding Officer. Reasons have also been held to be necessary in the jurisprudence. On the principle of 'Justice should not only be done but seems to be done' as held by the Apex Court in *Fakruddin vs. Principal Consolidation Training Institute and others (1995) 4 SCC 538.* The observation of the Apex Court are as under:

" Justice should not only be done but seem to be done. That is the basis structure on which confidence and faith in the institution rests. The judiciary from the bottom in the hierarchy in the apex at the top commands respect because of its impartiality and objectivity."

It has been held by the Apex court in *Union of India vs. Mohan Lal Kapoor 1973 (2) SCC 836 as under:*

"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions."

Apex Court in the later decision in the case *Maharashtra State of Secondary and Higher Secondary Education vs. K.S. Ghandhi and others (1991) 2 SCC 716,* the Apex court had clarified that it was settled law that the reasons are necessary. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. The observations of the Apex Court are as under:-

"In Union of India v. Mohan Lal Capoor (1973) 2 SCC 836: this Court speaking through M.H. Beg, J.; for a bench of two Judges held in paragraph 28 at page 854 that the reasons are the links between the materials on which certain conclusions are based to the actual conclusion. The disclose how mind is applied to the subject

matter for a decision, whether it is purely administrative or quasi judicial. They would reveal nexus between the facts considered and the conclusions reached. This view was reiterated in Gurdial Singh Fijji v. State of Pubjab (1979) 2 SCC 368. In these two cases relief on by Sri Chidambaram, the rules/regulations required recording of reasons in support of the conclusion as mandatory."

I am not expressing any opinion on the merit of the issue and it will be open for the revisional court to apply his independent mind and to decide the revision with a reasoned order.

In the result the writ petition is allowed. The matter is remanded back to the Revisional Court for deciding the revision afresh in the light of observations made above, within a period of one month, if possible.

(Rajesh Tandon, J.)

27.08.2003

*Dhyani